IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1206 (SS) OF 2004

Yashvendra Singh,
S/o late Sri Kartar Singh,
Aged about 21 years,
R/o Village Kasampur, Tehsil- Jaspur,
District- Udham Singh Nagar, Uttaranchal. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary (Basic Education), Uttaranchal Shasan, Dehradun.
2. Basic Shiksha Adhikari, Udham Singh Nagar, District – Udham Singh Nagar. .....Respondents.

Mr. M.C. Bansal, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondent to give compassionate appointment to the petitioner as Assistant Teacher in a Junior High School under U.P. Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 adopted by the State of Uttaranchal in the year, 2002.

2. Briefly stated, the father of the petitioner Shri Kartar Singh was posted as Head Teacher in Uchcha Prathmik Vidyalaya, Patrampur, Tehsil- Jaspur, District Udham Singh Nagar at the time of his death on 28.02.1997. He had rendered 27 years of service at the time of his death. The deceased is survived by his wife Smt. Kaushalya Devi, who is physically handicapped and four children.

3. Petitioner has submitted that at the time of death of his father, the petitioner was aged about 14 years (minor) and he did his High School in the year, 1999 and passed Intermediate in the year, 2001 from the Board of High School and Intermediate Education, Uttar Pradesh and did his B.A. in the year, 2004 form Mahatma Jyotiba Puhule, Rohilkhand University, Bareilly and also passed B.A. in Urdu from Jamia Urdu, Aligarh.

4. Petitioner has submitted that the mother of the petitioner on 11.12.1997 just after the death of Sri Kartar Singh father of the petitioner made an application informing the Basic Shiksha Adhikari, Udham Singh Nagar that her son Mr. Yashvendra is minor and studying in High School, therefore, a seat be kept reserved for her son under U.P. Recruitment of Dependants of Government Servants Dying in harness Rules, 1974.

5. On 05.07.2004, the petitioner applied in the office of Basic Shiksha Adhikari, Udham Singh Nagar for appointment as Assistant Teacher in a Junior High School under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 adopted by the State of Uttaranchal in the year, 2002, but the grievance of the petitioner is that the same has not yet been considered by the respondents.

6. Since at the time of death of the bread-earner the petitioner was minor, the post cannot be reserved on the ground that the petitioner at the relevant time was minor. However, he applied for the same in the year, 2004. Rule 5 of the Uttar Pradesh Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974 adopted by the State of Uttaranchal provides that the application has to be filed within a period of five years, the same can be entertained even beyond the period of five years in view of the proviso to Rule 5

of the rules framed under Dying in Harness Rules. The same is quoted below:-

"[5. Recruitment of a member of the family of the deceased.*-(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person---*

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years form the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such, an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]

[(3) Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule

(1) shall upkeep those other family members of the deceased Government Servant, who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death."

6. The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has observed as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

7. The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138 has relied upon the judgment of Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment,

the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"*It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.*"

8. It is well settled that appointment on the compassionate ground is made on purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

9. In view of the above, the respondents are directed to dispose of the application filed by the petitioner within a period of two months from the date of presentation of the certified copy of the order.

10. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

03.03.2006

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